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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT
SOUTHERN DIVISION

UNILOC LUXEMBOURG, S.A.,

Plaintiff,

vs.

MICHAEL W. BRODERICK,

Defendant.

CASE NO: 8:16-cv-00231-CJC-DFM

Assigned to: Judge Cormac J. Carney

Dept.: 9B

Referred to: Magistrate Judge Douglas
F. McCormick

Dept.: 6B

Complaint Filed: 10/13/15

Trial Date: 6/20/17

**STIPULATED PROTECTIVE
ORDER FOR LITIGATION
INVOLVING CONFIDENTIAL
INFORMATION AND ORDER**

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF**
2 **RECORD:**

3 **1. PURPOSES AND LIMITATIONS**

4 Disclosure and discovery activity in this action is likely to involve
5 production of confidential, proprietary, or private information for which special
6 protection from public disclosure and from use for any purpose other than
7 prosecuting this litigation may be warranted. Accordingly, the parties hereby
8 stipulate to and petition the court to enter the following Stipulated Protective
9 Order. The parties acknowledge that this Order does not confer blanket
10 protections on all disclosures or responses to discovery and that the protection it
11 affords from public disclosure and use extends only to the limited information or
12 items that are entitled to confidential treatment under the applicable legal
13 principles. The parties further acknowledge, as set forth below, that this
14 Stipulated Protective Order does not entitle them to file confidential information
15 under seal, and the standards set forth in the Local Rules will be applied when a
16 party seeks permission from the court to file material under seal.
17

18 **2. GOOD CAUSE STATEMENT**

19 This action is likely to commercial, financial, technical and/or proprietary
20 information for which special protection from public disclosure and from use for
21 any purpose other than prosecution of this action is warranted. Such confidential
22 and proprietary materials and information consist of, among other things,
23 confidential business or financial information, information regarding confidential
24 business practices, or other confidential research, development, or commercial
25 information (including information implicating privacy rights of third parties),
26 information otherwise generally unavailable to the public, or which may be
27 privileged or otherwise protected from disclosure under state or federal statutes,
28 court rules, case decisions, or common law. Accordingly, to expedite the flow of

1 information, to facilitate the prompt resolution of disputes over confidentiality of
 2 discovery materials, to adequately protect information the parties are entitled to
 3 keep confidential, to ensure that the parties are permitted reasonable necessary uses
 4 of such material in preparation for and in the conduct of trial, to address their
 5 handling at the end of the litigation, and serve the ends of justice, a protective order
 6 for such information is justified in this matter. It is the intent of the parties that
 7 information will not be designated as confidential for tactical reasons and that
 8 nothing be so designated without a good faith belief that it has been maintained in
 9 a confidential, non-public manner, and there is good cause why it should not be
 10 part of the public record of this case.

11 **3. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER** 12 **SEAL**

13
 14 The parties further acknowledge, as set forth in Section 12.3, below, that
 15 this Stipulated Protective Order does not entitle them to file confidential
 16 information under seal; Local Civil Rule 79-5 sets forth the procedures that must
 17 be followed and the standards that will be applied when a party seeks permission
 18 from the court to file material under seal.

19 There is a strong presumption that the public has a right of access to judicial
 20 proceedings and records in civil cases. In connection with non-dispositive
 21 motions, good cause must be shown to support a filing under seal. *See Kamakana*
 22 *v. City and County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v.*
 23 *Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v.*
 24 *Sony Electronics, Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated
 25 protective orders require good cause showing), and a specific showing of good
 26 cause or compelling reasons with proper evidentiary support and legal justification,
 27 must be made with respect to Protected Material that a party seeks to file under
 28 seal. The parties' mere designation of Disclosure or Discovery Material as

1 CONFIDENTIAL does not—without the submission of competent evidence by
2 declaration, establishing that the material sought to be filed under seal qualifies as
3 confidential, privileged, or otherwise protectable—constitute good cause.

4 Further, if a party requests sealing related to a dispositive motion or trial,
5 then compelling reasons, not only good cause, for the sealing must be shown, and
6 the relief sought shall be narrowly tailored to serve the specific interest to be
7 protected. *See Pintos v. Pacific Creditors Ass’n*, 605 F.3d 665, 677-79 (9th Cir.
8 2010). For each item or type of information, document, or thing sought to be filed
9 or introduced under seal in connection with a dispositive motion or trial, the party
10 seeking protection must articulate compelling reasons, supported by specific facts
11 and legal justification, for the requested sealing order. Again, competent evidence
12 supporting the application to file documents under seal must be provided by
13 declaration.
14

15 Any document that is not confidential, privileged, or otherwise protectable
16 in its entirety will not be filed under seal if the confidential portions can be
17 redacted. If documents can be redacted, then a redacted version for public
18 viewing, omitting only the confidential, privileged, or otherwise protectable
19 portions of the document, shall be filed. Any application that seeks to file
20 documents under seal in their entirety should include an explanation of why
21 redaction is not feasible.

22 4. DEFINITIONS

23 4.1 Challenging Party: a Party or Non-Party that challenges the
24 designation of information or items under this Order.

25 4.2 “CONFIDENTIAL” Information or Items: information (regardless
26 of how it is generated, stored or maintained) or tangible things that qualify for
27 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
28 the Good Cause Statement.

1 4.3 Counsel (without qualifier): Counsel of Record, their co-counsel,
2 and their support staff.

3 4.4 Designating Party: a Party or Non-Party that designates information
4 or items that it produces in disclosures or in responses to discovery as
5 “CONFIDENTIAL.”

6 4.5 Disclosure or Discovery Material: all items or information,
7 regardless of the medium or manner in which it is generated, stored, or
8 maintained (including, among other things, testimony, transcripts, and tangible
9 things), that are produced or generated in disclosures or responses to discovery in
10 this matter.

11 4.6 Expert: a person with specialized knowledge or experience in a
12 matter pertinent to the litigation who ~~(1)~~ has been retained by a Party or its
13 counsel to serve as an expert witness or as a consultant in this action.

14 4.7 Non-Party: any natural person, partnership, corporation, association,
15 or other legal entity not named as a Party to this action.

16 4.8 Outside Counsel of Record: attorneys who are not employees of a
17 party to this action but are retained to represent or advise a party to this action
18 and have appeared in this action on behalf of that party or are affiliated with a
19 law firm, which has appeared on behalf of that party.

20 4.9 Party: any party to this action, including all of its officers, directors,
21 employees, consultants, retained experts, and Outside Counsel of Record (and
22 their support staffs).

23 4.10 Producing Party: a Party or Non-Party that produces Disclosure or
24 Discovery Material in this action.

25 4.11 Professional Vendors: persons or entities that provide litigation
26 support services (e.g., photocopying, videotaping, translating, preparing exhibits
27
28

1 or demonstrations, and organizing, storing, or retrieving data in any form or
 2 medium) and their employees and subcontractors.

3 4.12 Protected Material: any Disclosure or Discovery Material that is
 4 designated as “CONFIDENTIAL.”

5 4.13 Receiving Party: a Party that receives Disclosure or Discovery
 6 Material from a Producing Party.

7 5. SCOPE

8 The protections conferred by this Stipulation and Order cover not only
 9 Protected Material (as defined above), but also (1) any information copied or
 10 extracted from Protected Material; (2) all copies, excerpts, summaries, or
 11 compilations of Protected Material; and (3) any testimony, conversations, or
 12 presentations by Parties or their Counsel that might reveal Protected Material.

13 However, the protections conferred by this Stipulation and Order do not cover the
 14 following information: (a) any information that is in the public domain at the time
 15 of disclosure to a Receiving Party or becomes part of the public domain after its
 16 disclosure to a Receiving Party as a result of publication not involving a violation
 17 of this Order, including becoming part of the public record through trial or
 18 otherwise; and (b) any information known to the Receiving Party prior to the
 19 disclosure or obtained by the Receiving Party after the disclosure from a source
 20 who obtained the information lawfully and under no obligation of confidentiality to
 21 the Designating Party. Any use of Protected Material at trial shall be governed by
 22 the orders of the trial judge. This Order does not govern the use of Protected
 23 Material at trial.
 24

25 6. DURATION

26 Once a case proceeds to trial, information that was designated as
 27 confidential or maintained pursuant to this protective order used or introduced as
 28 an exhibit at trial becomes public and will be presumptively available to all

1 members of the public, including the press, unless compelling reasons supported
 2 by specific factual findings to proceed otherwise are made to the trial judge in
 3 advance of the trial. See *Kamakana*, 447 F.3d at 1180-81 (distinguishing “good
 4 cause” showing for sealing documents produced in discovery from “compelling
 5 reasons” standard when merits-related documents are part of court record).
 6 Accordingly, the terms of this protective order do not extend beyond the
 7 commencement of the trial.

8 7. DESIGNATING PROTECTED MATERIAL

9 7.1 Exercise of Restraint and Care in Designating Material for Protection.

10 Each Party or Non-Party that designates information or items for protection under
 11 this Order must take care to limit any such designation to specific material that
 12 qualifies under the appropriate standards. Mass, indiscriminate or routinized
 13 designations are prohibited. Designations that are shown to be clearly unjustified
 14 or that have been made for an improper purpose (e.g., to unnecessarily encumber
 15 the case development process or to impose unnecessary expenses and burdens on
 16 other parties) may expose the Designating Party to sanctions.

17 If it comes to a Designating Party’s attention that information or items that
 18 it designated for protection do not qualify for protection at all or do not qualify
 19 for the level of protection initially asserted, that Designating Party must promptly
 20 notify all other parties that it is withdrawing the mistaken designation.

21 7.2 Manner and Timing of Designations. Except as otherwise provided
 22 in this Order, or as otherwise stipulated or ordered, Disclosure or Discovery
 23 Material that qualifies for protection under this Order must be clearly so
 24 designated before the material is disclosed or produced.

25 Designation in conformity with this Order requires:

- 26 (a) for information in documentary form (e.g., paper or electronic
- 27 documents, but excluding transcripts of depositions or other pretrial or trial
- 28

1 proceedings), that the Producing Party affix the legend “CONFIDENTIAL” to
2 each page that contains protected material. If only a portion of the material on a
3 page qualifies for protection, the Producing Party also must clearly identify the
4 protected portion(s) (e.g., by making appropriate markings in the margins).

5 A Party or Non-Party that makes original documents or materials available for
6 inspection need not designate them for protection until after the inspecting Party
7 has indicated which material it would like copied and produced. During the
8 inspection and before the designation, all of the material made available for
9 inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has
10 identified the documents it wants copied and produced, the Producing Party must
11 determine which documents, or portions thereof, qualify for protection under this
12 Order. Then, before producing the specified documents, the Producing Party must
13 affix the legend “CONFIDENTIAL” to each page that contains Protected Material.
14 If only a portion of the material on a page qualifies for protection, the Producing
15 Party also must clearly identify the protected portion(s) (e.g., by making
16 appropriate markings in the margins).
17

18 (b) for testimony given in deposition or in other pretrial or trial
19 proceedings, that the Designating Party identify on the record, before the close of
20 the deposition, hearing, or other proceeding, all protected testimony (including
21 exhibits) and specify the level of protection being asserted.

22 Transcripts (including exhibits) containing Protected Material shall have an
23 obvious legend on the title page that the transcript contains Protected Material,
24 and the title page shall be followed by a list of all pages (including line numbers
25 and exhibit numbers as appropriate) that have been designated as Protected
26 Material and the level of protection being asserted by the Designating Party. The
27 Designating Party shall inform the court reporter of these requirements.
28

1 (c) for information produced in some form other than documentary
 2 and for any other tangible items, that the Producing Party affix in a prominent
 3 place on the exterior of the container or containers in which the information or
 4 item is stored the legend "CONFIDENTIAL." If only a portion or portions of the
 5 information or item warrant protection, the Producing Party, to the extent
 6 practicable, shall identify the protected portion(s) and specify the level of
 7 protection being asserted.

8 7.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
 9 failure to designate qualified information or items does not, standing alone, waive
 10 the Designating Party's right to secure protection under this Order for such
 11 material. Upon timely correction of a designation, the Receiving Party must make
 12 reasonable efforts to assure that the material is treated in accordance with the
 13 provisions of this Order.

14 8. CHALLENGING CONFIDENTIALITY DESIGNATIONS

15 8.1 Timing of Challenges. Any Party or Non-Party may challenge a
 16 designation of confidentiality at any time. Unless a prompt challenge to a
 17 Designating Party's confidentiality designation is necessary to avoid foreseeable,
 18 substantial unfairness, unnecessary economic burdens, or a significant disruption
 19 or delay of the litigation, a Party does not waive its right to challenge a
 20 confidentiality designation by electing not to mount a challenge promptly after
 21 the original designation is disclosed.

22 8.2 Meet and Confer. A Party that elects to initiate a challenge to a
 23 Designating Party's confidentiality designation must do so in good faith and must
 24 comply with the meet and confer requirements and procedures set forth in Civil
 25 Local Rule 37-1 and 37-2. The burden of persuasion in any such challenge
 26 proceeding shall be on the Designating Party in a manner consistent with Rule
 27
 28

1 26(c). Until the Court rules on the challenge, all parties shall continue to afford
 2 the material in question the level of protection designated by the Producing Party.

3 9. ACCESS TO AND USE OF PROTECTED MATERIAL

4 9.1 Basic Principles. A Receiving Party may use Protected Material that
 5 is disclosed or produced by another Party or by a Non-Party in connection with
 6 this case only for prosecuting, defending, or attempting to settle this litigation.
 7 Such Protected Material may be disclosed only to the categories of persons and
 8 under the conditions described in this Order. When the litigation has been
 9 terminated, a Receiving Party must comply with the provisions of section 10
 10 below (FINAL DISPOSITION).

11 Protected Material must be stored and maintained by a Receiving Party at a
 12 location and in a secure manner that ensures that access is limited to the persons
 13 authorized under this Order.

14 9.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
 15 otherwise ordered by the court or permitted in writing by the Designating Party, a
 16 Receiving Party may disclose any information or item designated
 17 “CONFIDENTIAL” only to:
 18

19 (a) the Receiving Party’s Outside Counsel of Record in this action,
 20 as well as employees of said Outside Counsel of Record to whom it is reasonably
 21 necessary to disclose the information for this litigation;

22 (b) the Receiving Party, and the officers, directors, and employees of
 23 the Receiving Party to whom disclosure is necessary for this litigation;

24 (c) Experts (as defined in this Order) of the Receiving Party to
 25 whom disclosure is necessary for this litigation and who have signed the
 26 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

27 (d) the court and its personnel;

28 (e) court reporters and their staff;

1 (f) professional jury or trial consultants, and Professional Vendors to
 2 whom disclosure is necessary for this litigation and who have signed the
 3 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 (g) during their depositions, witnesses in the action to whom
 5 disclosure is necessary and who have signed the “Acknowledgment and
 6 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the
 7 Designating Party or ordered by the court. Pages of transcribed deposition
 8 testimony or exhibits to depositions that reveal Protected Material must be
 9 separately bound by the court reporter and may not be disclosed to anyone except
 10 as permitted under this Stipulated Protective Order;

11 (h) the author or recipient of a document containing the information or a
 12 custodian or other person who otherwise possessed or knew the information; or

13 (i) any mediator or settlement officer, and their supporting personnel,
 14 mutually agreed upon by any of the parties engaged in settlement discussions.

15 **10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**

16 **IN OTHER LITIGATION** If a Party is served with a subpoena or a court
 17 order issued in other litigation that compels disclosure of any information or
 18 items designated in this Action as “CONFIDENTIAL,” that Party must:

19 (a) promptly notify in writing the Designating Party. Such notification shall
 20 include a copy of the subpoena or court order; and/or

21 (b) promptly notify in writing the party who caused the subpoena or order to
 22 issue in the other litigation that some or all of the material covered by the
 23 subpoena or order is subject to this Protective Order. Such notification shall
 24 include a copy of this Stipulated Protective Order; and (c) cooperate with
 25 respect to all reasonable procedures sought to be pursued by the Designating
 26 Party whose Protected Material may be affected.
 27
 28

1 If the Designating Party timely seeks a protective order, the Party served
 2 with the subpoena or court order shall not produce any information
 3 designated in this action as “CONFIDENTIAL” before a determination by
 4 the court from which the subpoena or order issued, unless the Party has
 5 obtained the Designating Party’s permission. The Designating Party shall
 6 bear the burden and expense of seeking protection in that court of its
 7 confidential material and nothing in these provisions should be construed as
 8 authorizing or encouraging a Receiving Party in this Action to disobey a
 9 lawful directive from another court.

10 11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
 11 PRODUCED IN THIS LITIGATION

12 (a) The terms of this Order are applicable to information produced by a Non-
 13 Party in this Action and designated as “CONFIDENTIAL.” Such information
 14 **produced by Non-Parties in connection with this litigation is protected by the**
 15 **remedies and relief provided by this Order. Nothing in these provisions**
 16 **should be construed as prohibiting a Non-Party from seeking additional**
 17 **protections.**

18 (b) In the event that a Party is required, by a valid discovery request, to
 19 produce a Non-Party’s confidential information in its possession, and the Party is
 20 subject to an agreement with the Non-Party not to produce the Non-Party’s
 21 confidential information, then the Party shall:

- 22 (1) promptly notify in writing the Requesting Party and the Non-Party that
 23 some or all of the information requested is subject to a confidentiality
 24 agreement with a Non-Party;
 25 (2) promptly provide the Non-Party with a copy of the Stipulated Protective
 26 Order in this Action, the relevant discovery request(s), and a reasonably
 27 specific description of the information requested; and
 28

1 (3) make the information requested available for inspection by the Non-
2 Party, if requested.

3 (c) If the Non-Party fails to seek a protective order from this court within 14
4 days of receiving the notice and accompanying information, the Receiving
5 Party may produce the Non-Party's confidential information responsive to the
6 discovery request. If the Non-Party timely seeks a protective order, the
7 Receiving Party shall not produce any information in its possession or control
8 that is subject to the confidentiality agreement with the Non-Party before a
9 determination by the court. Absent a court order to the contrary, the Non-Party
10 shall bear the burden and expense of seeking protection in this court of its
11 Protected Material.

12 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

13
14 If a Receiving Party learns that, by inadvertence or otherwise, it has
15 disclosed Protected Material to any person or in any circumstance not authorized
16 under this Stipulated Protective Order, the Receiving Party must immediately (a)
17 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
18 best efforts to retrieve all unauthorized copies of the Protected Material, (c)
19 inform the person or persons to whom unauthorized disclosures were made of all
20 the terms of this Order, and (d) request such person or persons to execute the
21 "Acknowledgment and Agreement to Be Bound" that is attached hereto as
22 Exhibit A.

23 13. FILING PROTECTED MATERIAL

24 Without written permission from the Designating Party or a court order
25 secured after appropriate notice to all interested persons, a Party may not file in
26 the public record in this action any Protected Material. A Party that seeks to file
27 under seal any Protected Material must comply with Civil Local Rule 79-5.1.
28

1 14. FINAL DISPOSITION

2 Unless otherwise ordered or agreed in writing by the parties, within 60
3 days after the termination of this action, as defined in paragraph 4 (DURATION),
4 each Receiving Party must return all Protected Material to the Producing Party or
5 provide a written certification within the 60 day period that all of the Protected
6 Material has been destroyed. Such certification shall affirm that all the Protected
7 Material was destroyed that the Receiving Party has not retained any copies,
8 abstracts, compilations, summaries or any other format reproducing or capturing
9 any of the Protected Material. Notwithstanding this provision, Counsel are
10 entitled to retain an archival copy of all pleadings, motion papers, trial,
11 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
12 and trial exhibits, expert reports, attorney work product, and consultant and
13 expert work product, even if such materials contain Protected Material. Any such
14 archival copies that contain or constitute Protected Material remain subject to this
15 Protective Order as set forth in Section 4 (DURATION).
16

17 15. MISCELLANEOUS

18 15.1 Right to Further Relief. Nothing in this Order abridges the right of
19 any person to seek its modification by the Court in the future.

20 15.2 Right to Assert Other Objections. By stipulating to the entry of this
21 Protective Order, no Party waives any right it otherwise would have to object to
22 disclosing or producing any information or item on any ground not addressed in
23 this Stipulated Protective Order. Similarly, no Party waives any right to object
24 on any ground to use in evidence of any material covered by this Protective
25 Order.

26 15.3 Filing Protected Material. A Party that seeks to file under seal any
27 Protected Material must comply with Local Civil Rule 79-5. Protected Material
28 may only be filed under seal pursuant to a court order authorizing the sealing of the

specific Protected Material at issue. If a Party's request to file Protected Material under seal is denied by the court, then the Receiving Party may file the information in the public record unless otherwise instructed by the court.

16. VIOLATION

Any violation of this Order may be punished by appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

(Signature page and [Proposed] Order follows)

Dated: January 23, 2017

SMITH LC

/s/ Steven C. Smith

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1 Dated: January 23, 2017

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/s/ Jason N. Cirlin

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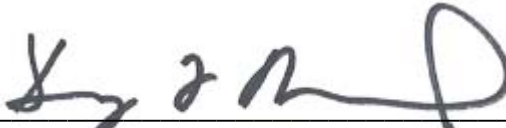
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***Attorneys for Defendant
Michael W. Broderick***

PURSUANT TO STIPULATION, IT IS SO ORDERED.

19 DATED: February 1, 2017



Honorable Douglas F. McCormick
United States District/Magistrate Judge

EXHIBIT A**AGREEMENT TO BE BOUND BY PROTECTIVE ORDER**

I, _____, have read and fully understand the Stipulated Protective Order (“Protective Order”) in effect in case No. 8:16-cv-00231-CJC-DFM, commonly known as *Uniloc Luxembourg, S.A. v. Michael W. Broderick*, (the “Lawsuit”). I agree to comply with and be bound by the Protective Order and by such other orders as the Court may make regarding discovery of Confidential Information, as defined in the Protective Order. I agree that I will not disclose, either directly or indirectly, any Confidential Information to any person or in any manner not specifically authorized by the Protective Order. I agree that I will not copy or use any Confidential Information except solely for the purposes of the Lawsuit and I will return any Confidential Information and any copies thereof within 60 days of the termination or the final disposition of the Lawsuit as set forth in the Protective Order. I agree that I will not distribute copies of, or provide access to, any Confidential Information to any person, either directly or indirectly, except as set forth in the Protective Order. I hereby consent to the jurisdiction of this Court for the purposes of enforcing this Protective Order.

Signature: _____

Printed Name: _____

Date: _____